COURT NO.2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 1050 of 2001

Smt. Munni Devi & another. ….. **Appellants.**

Versus

U.P.S.R.T.C. Dehradun
and others. ….. **Respondents.**

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988, ***(in short the Act)*** against the judgment and Award dated 4.5.2001 passed in M.A.C. Petition No. 192 of 1993, Smt. Munni Devi and 3 others Vs. U.P.S.R.T.C. & 5 others, by Motor Accident Claims Tribunal/District Judge, Dehradun, ***(in short the Tribunal)***, whereby the learned Tribunal has dismissed the petition with cost under Section 166 of the Act of the claimants. Aggrieved, the claimants No. 1 and 3/appellants have come up in appeal on the ground that the findings of the learned Tribunal is not based on the evidence on record.

Brief facts, giving rise to the present appeal, are that the claimants have filed the claim petition for compensation of Rs. 7,10,000/- before the learned Tribunal for the death of Satya Prasad, husband of claimant-appellant no. 1, alleging therein that the deceased was aged 47 years and working as mason besides doing the cattle business and earning Rs. 4,000/- per month. The claimants are his wife, two minor daughters and one minor son; that on 23.12.1992 at 6.00 p.m. the deceased was going from Dehradun to Selakui by City Bus No. UGY-8289 and he had to drop at village Ummed Pur. When the said bus reached village Suddowala, just in front of Durga Temple, then due to rash and negligent driving of the bus by its driver, the bus took a jump and on account of impact

thereof, the deceased, who was seated near the door on the seat fell down out of the bus. On which, the co-passengers including Sundar Lal and Diwakar raised alarm and told the conductor that one person had fallen down from the front door of the bus; but the driver of the bus stopped the vehicle after about 100 mts. ahead. The deceased Satya Prakash died from the fall thereby crushing of his head under the back wheel of the vehicle. After the accident, the driver and conductor of the bus took the bus further ahead saying that they will report the matter in the police station; but nothing was done. When the deceased did not return to his house, then on making enquiry the claimants came to know that one person had died on 23.12.1992 within the jurisdiction of P.S. Sahaspur. Then the son of the deceased went to the police station to know the fact. Then the claimants came to know about the death of Satya Prasad in the motor accident. According to claimants the deceased was a person of about 47 years having good health and he used to earn about Rs. 70-80 from the work of mason besides doing the work of cattle-keeping etc, as mentioned earlier, earning Rs. 3-4 thousand in a month. Hence, claim petition has been filed claiming Rs. 7,10,000/- as compensation.

The Opposite Party Nos. 1 and 2 (respondent nos. 1 and 2) the owner and driver respectively of the bus in question contested the petition by filing their joint written statement. They have denied the allegations made in the petition and categorically denied the accident having been occurred with the bus in question. It is also alleged that the amount of compensation is highly excessive. In additional pleas, presentation and verification of the petition as per law has been challenged and impleadment of the Opposite Parties has been said for ulterior motive.

The Opposite Parties nos. 3 to 6 being the married sons and daughters of the deceased have been arrayed as formal party and no relief has been sought against them, therefore, they have not contested the claim petition.

On the pleadings of the parties, the following Issues were framed by the learned Tribunal:-

1. ***Whether accident took place on 23-12-92 at 6.30 p.m . at Sahaspur-Dehradun-Suddowala Road in front of Durga Temple due to rash and negligent driving of the driver of the Bus No. UGY-8289 as a result of which Satya Prasad died?***
2. ***Whether the petitioners are entitled to compensation? If so, its effect?***
3. ***To what relief, if any, are the petitioners entitled?***

In support of their case, the claimants have filed certified copies of Post Mortem Report and Inquest Report in respect of dead body of the deceased as well as certified copy of F.I.R. registered at Crime No. 305/92 under Section 279/304 I.P.C. by S.I. Ompal Singh against unknown person on 24.12.1992. The claimants have adduced as many as four witnesses, namely, Rajeshwari, as P.W.1, Prem Lal as P.W.2, Diwakar Chamoli, as P.W.3, and Vachaspati as P.W.4 before the Tribunal. On the other hand, the Opposite Parties-respondents have produced conductor of the bus, Vimlesh Kumar Shukla, as O.P.W.1, in support of their contention.

The learned Tribunal after hearing both the parties and going through the evidence on record, took Issue No.1 for disposal and it came to the conclusion that the claimants have failed to prove that the accident in question resulting in the death of the deceased was the result of rash and negligent driving by the driver of the alleged bus and, accordingly, decided the Issue No.1 against the claimants. The Tribunal took up Issue Nos. 2 and 3 together relating to relief sought and it came to the conclusion that since the deceased used to earn Rs. 70-80 per day, therefore, the monthly income of the deceased comes between Rs. 2100 and 2400. However, the learned Tribunal has not recorded any finding as to loss of dependency incurred by the claimants due to death of the

deceased, mentioning that the claimants have failed to prove the accident involving bus in question and ultimately, decided both these issues against the claimants thereby dismissing the claim petition with cost.

It has been contended on behalf of the claimants-appellants that it was proved on record from the evidence of independent witnesses Diwakar Chamoli, P.W.3, and Vachaspati, P.W.4, that the deceased was travelling in the bus in question and it was due to rash and negligent driving of the driver of the bus that Satya Prasad, deceased, died as a result thereof on the fateful day. The learned Tribunal has thus failed to appreciate the evidence available before it.

We have heard learned counsel for the parties and have carefully gone through the entire evidence on record as well as the impugned judgment and award.

In the present case, the main point for consideration before us is that whether on the record, it has been prima facie made out that the death of the deceased Satya Prasad was result of rash and negligent driving of the bus in question by its driver as alleged in the claim petition or not. It is true that in this case, no F.I.R. of the accident has been lodged from the side of the claimant-appellants. However, from the bare perusal of the petition, it comes out that the claimants have come to know about the accident after many days of the incident and this fact has been clearly mentioned by the claimant-appellants. The most important aspect of this case is that the claimants have named two witnesses, namely, Sundar Lal and Diwakar to have been travelling by the said bus in which the deceased Satya Prakash was going on the fateful day. But the Opposite Party- respondent nos. 1 and 2 could not muster courage to categorically deny in their written statement that none of the two witnesses named was travelling by the alleged bus. Moreover, P.W.3, Diwakar Chamoli, in his statement on oath has given ocular account of the accident in question, thereby corroborated the

allegations made in the claim petition. This witness has been cross-examined at length before the learned Tribunal and in para no. 9 he has denied the suggestion of the respondent-O.Ps. that he was not travelling by the alleged bus or he has been won over the claimants. In the opening paragraph of his cross-examination, this witness has stated that a criminal case has been filed against the driver of the bus and police has recorded his statement. From the careful scrutiny of the statement of P.W.3, we find that there is nothing to indicate that this witness Diwakar Chamoli is in any way an interested or cooked up witness for the purpose of the claim petition, rather, we are of the opinion that P.W.3 is a reliable and independent witness and we find no reason to discard the testimony of this star witness. In his cross-examination, this witness has specifically denied the suggestion of the respondents that the driver of the bus was not driving the bus rashly and negligently at the time of accident. From the evidence of this witness P.W.3 coupled with the documentary evidence, viz. certified copies of F.I.R., Post Mortem Report and Inquest Report, we are of the view that it has been sufficiently proved on record that the accident in question resulting into grievous injuries and consequent death of the deceased took place due to rash and negligent driving by the driver of the Bus No. UGY-8289 on 23.12.1992 as alleged by the claimant-appellants.

Further, the evidence of P.W.4 Vachaspati is also relevant on the point that the accident in question was result of rash and negligence on the part of driver of Bus No. UGY-8289. This witness too has corroborated the testimony of P.W.3 on all material points. In his examination-in-chief, he has specifically stated that there was no door in the alleged bus. This witness too has given ocular version of the said motor accident before the Tribunal. From the testimony of P.W.4, it comes out that this witness too is an independent and reliable witness and he was travelling by the said bus. He has also given categorical statement that the driver of the bus in question was driving the vehicle rashly and negligently, due

to which the bus took a heavy jump, resulting in the fall and consequent death of the deceased on the fateful day. Nothing has been pointed out to us to show that eye witness account of the accident as stated to by this witness cannot be believed or that the witness is an interested witness. Nothing has been submitted before us on behalf of the respondents us even slightly to indicate as to why these two witnesses (P.W. 3 and P.W.4) would favour extraneously to the claimant-appellants so as to give false evidence against the driver of the offending vehicle. Even the conductor of the offending bus, O.P.W.1, produced as witness on behalf of the respondent-O.Ps., in his testimony could not muster courage to state in his examination-in-chief to the effect that both the above eye witnesses were not travelling in the offending bus on the date of accident or that they have any grudge to give false evidence against the driver of the offending bus. This witness O.P.W. 1 could not even categorically deny the suggestion of the appellants that a criminal proceeding was initiated against the driver O.P.-respondent no,.2 Badri Prasad, and has showed his ignorance on this material point.

One more important aspect of this case, the notice of which ought to have been taken by the learned Tribunal for recording a finding on Issue No. 1 is that the driver of the offending bus, Badri Prasad, has been undisputedly alive and has filed joint written statement before the Tribunal to contest the petition. But the Opposite Parties-respondents could not dare produce him before the Tribunal, who could be the best witness to corroborate the averments made in the written statement. Non production of this material witness before Tribunal is a strong circumstance against the respondents.

The ocular account of the accident as narrated by these two witnesses before the Tribunal is very much convincing and trustworthy to make out prima facie case of rash and negligent driving by the driver of the offending vehicle in favour of the

claimant-appellants. The learned Tribunal has failed to scrutinize the evidence of these important witnesses, which, in our opinion, is sufficient to warrant interference with the findings recorded on Issue No.1 by the learned Tribunal in the impugned judgment and ward.

From the above narration of evidence of P.W.3 and P.W.4 as well as that the witness O.P.W.1, it is clearly made out that the accident in question was the result of rash and negligent driving by the driver of Bus No. UGY-8289 thereby causing grievous injuries and on spot death of deceased Satya Prasad. We are inclined to accept the contention raised on behalf of the appellant and hold that the accident in question resulting in the death had occurred due to rash and negligent driving by the driver of the aforesaid bus. Accordingly, the finding of the learned Tribunal on Issue No.1 is set aside.

As regards the findings on Issue No.2 and 3, we have already mentioned above that the learned Tribunal has not recorded any finding as to loss incurred to the appellants due to death of the deceased in the accident. The Tribunal has observed that the monthly incomes of the deceased hinges between Rs. 2100/- and 2400/-. In the cases, where no fixed income is proved on record, the law provides that notional income of the deceased shall be taken as Rs. 15000/- per annum. In this case, in the circumstances of the case, we are of the view that the notional income of Rs. 15000/- per annum should be taken for working out the amount of compensation. Out of this amount, 1/3rd shall be deducted as personal expenses of the deceased to work out annual loss of dependency. Thus, the annual loss comes to Rs. 10,000/-.

P.W. 1 and P.W.2 are sons of deceased. They have stated the age of their deceased father as 47-48 years at the time of his death. Moreover, the age of the deceased has not been challenged by the Opposite Parties-respondents, therefore, the deceased comes in the age group of 45-50 years. Accordingly, in

the present case the multiplier of ***13*** shall be applicable as per Second Schedule of Section 163-A of the Act. Thus, by applying the multiplier of 13, the total loss of dependency on account of death of the deceased comes to Rs. 10,000/- x 13 = 1,30,000/-. Accordingly, in our view, it will be just and proper to meet the ends of justice that the claimant-appellants are awarded total compensation for the death of the deceased to the tune of Rs. 1,30,000/- (one lac thirty thousand) along with Simple Interest at the rate of 9% per annum from the date of filing of claim petition, i.e. **4.5.1993** till payment against the opposite parties-respondents.

Ultimately, we are of the opinion that it will be just and proper to meet the ends of justice to award a total compensation of Rs. 1,30,000/- (one lac thirty thousand) along with Simple Interest @ 9% per annum, as mentioned above, to the claimant-appellants against the opposite parties-respondents.

Accordingly, the appeal is allowed and the judgment and award under appeal is set aside. The claim petition of the claimant-appellants is decreed against the Opposite Parties-respondents, for the sum of Rs. 1,30,000/- (one lac thirty thousand) as compensation along with Simple Interest @ 9% per annum from the date of filing of claim petition, i.e. ***4.5.1993*** till payment. No order as to costs.

(B.S. Verma, J.) **(P.C. Verma, J.)**

11-08-2004
RCP